IN THE SUPREME COURT OF THE STATE OF WASHINGTON

T.S., M.S. and K.S., Respondents, v. BOY SCOUTS OF AMERICA, a congressionally chartered corporation, authorized to do business in Washington, Petitioner, and PACIFIC HARBORS COUNCIL, BOY SCOUTS OF AMERICA, formerly known as Mount Rainier Council, a Washington public benefit corporation; CHIEF SEATTLE COUNCIL, BOY SCOUTS OF AMERICA, a Washington public benefit corporation; and BRUCE PHELPS, an individual, Defendants.	)	No. 76726-2 En Banc Filed July 27, 2006

OWENS, J. -- T.S., M.S., and K.S. filed suit against the Boy Scouts of America (BSA), two local BSA councils, and former scoutmaster Bruce Phelps, seeking damages for sexual abuse allegedly committed by Phelps in the 1970s and

1980s when plaintiffs were scouts. BSA seeks reversal of a discovery order requiring

production of its "Ineligible Volunteer Files" (the Files), a compilation of reports that BSA received over a period of decades regarding, primarily, allegations of the sexual abuse of minors by adult men. Clerk's Papers (CP) at 76. Asserting the privacy rights of third parties named in the Files, BSA contends that the trial court abused its discretion when it failed to follow the balancing test that this court had previously prescribed for weighing a political party's "First Amendment associational privilege" against a discovery request for disclosure of the party's minutes. *Snedigar v. Hodderson*, 114 Wn.2d 153, 158, 786 P.2d 781 (1990).

We conclude that the trial court was not required to apply the *Snedigar* balancing test when considering BSA's claim that disclosure of the Files would violate a constitutional right to privacy. Finding no abuse of discretion in the trial court's denial of BSA's motion for a protective order, we affirm the trial court.

Facts

Plaintiffs T.S. and M.S. filed a complaint for damages in November 2003 against BSA, two local BSA councils, and former scoutmaster Bruce Phelps,[1] alleging that for the 12-year period from 1971 to 1983, Phelps repeatedly sexually abused them. Plaintiffs' complaint states a cause of action against all defendants for negligent infliction of emotional distress.[2] The complaint also asserts that the BSA defendants

[1] Plaintiff K.S. was later added as a party.
[2] For consistency, this opinion will refer to the parties as "plaintiffs" and "BSA," recognizing that T.S., M.S., and K.S. remain plaintiffs at trial, were respondents in the

negligently retained and supervised Phelps and breached their fiduciary duty. Specifically, plaintiffs contend that the BSA defendants were negligent in "[f]ailing to timely adopt policies and procedures to protect children." CP at 34. Pursuant to an additional cause of action for estoppel and fraudulent concealment, plaintiffs claim that the BSA defendants "engaged in a plan of action to cover up incidents of the sexual abuse of minors by scout leaders and prevent disclosure, prosecution and civil litigation including, but not limited to: failure to report incidents of abuse to law enforcement or child protection agencies, concealment of abuse it had substantiated and failure to seek out and redress the injuries its scout leaders had caused." *Id*. at 35.

During the course of discovery, plaintiffs sought production of "copies of all 'Ineligible Volunteer Files' or similar documents or files regarding sexual abuse or abuse kept or maintained by BSA," along with "all documents which describe or explain the 'Ineligible Volunteer Files.'" *Id*. at 57. According to the declaration of BSA's director of registration, "[s]ince the beginning of the scouting movement," BSA has collected and maintained the Files "regarding individuals who do not meet the membership requirements of BSA." *Id*. at 76. The stated purpose of the system is "to collect information in an attempt to prevent any individual that does not meet the high standards of BSA from being able to register within any scouting organization

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Court of Appeals, and are respondents in this court, while BSA remains a defendant at trial, was appellant below, and is a petitioner before this court.

elsewhere." *Id*. at 77. When BSA receives a complaint, "a file is immediately set up." *Id*. The director of registration acknowledges that a file could be initiated "by nothing more than unsubstantiated rumors, hearsay, or news items" and that the "BSA conducts no internal investigation." *Id*. BSA has confirmed that, "prior to plaintiffs' complaint, there was no Ineligible Volunteer File relating to Bruce Phelps." *Id*. at 78. While the director of registration estimated that the total number of files in existence exceeded 2,000, BSA has elsewhere suggested that the number may be closer to 10,000. Plaintiffs' counsel has acquired access from a California attorney to approximately 1,900 files initiated between 1971 and 1990 and not protected by a court order in the prior civil litigation.

BSA moved the trial court for a protective order confirming that BSA was not required to make any further response to production requests concerning the Files. BSA argued that it should not be required to comply with plaintiffs' requests because the Files were irrelevant (in that none pertained to Phelps or to any individual connected to a fact at issue), compliance would be unduly burdensome, and "most importantly . . . the files and related information are highly confidential." *Id*. at 54. As to the last point, BSA asserted that production of the information would violate the "privacy rights" of third parties, including "(1) the scout leaders accused of sexual wrongdoing, (2) the complainants, (3) the witnesses, and (4) the alleged victims." *Id*.

at 63. Of particular concern were "the alleged victims of sexual abuse (many of whom are minors) and the scout volunteers accused, but not convicted, of sexual misconduct." *Id*. at 54. The director of registration stated that BSA considered the Files "confidential, both with regard to persons outside of BSA as well as with regard to persons inside the organization":

> BSA recognizes the sensitive nature of the information within these files, and a file is only made available to persons within the organization on a need-to-know basis. The reasons for the strong confidentiality restrictions are the privacy interest of any victims, the privacy interests of the accused individuals, and the privacy interests of other persons who may be involved as witnesses or reporters of the event.

Id. at 77-78. In addition to expressing concern for the violation of the privacy rights of third parties, the director of registration confirmed that "BSA [was] concerned that divulging this information under any circumstances [would] inhibit future reports of misconduct." *Id*. at 78.

Responding to BSA's motion, plaintiffs defined the issue as not whether BSA had prior knowledge that Phelps himself posed a risk or whether BSA now acknowledges that other scoutmasters have sexually abused scouts, but rather whether BSA was aware (or should have been aware) of the extent of the pedophilia threat during the period at issue here (1971 to 1983) and whether BSA's policies and procedures were timely and effective responses to the threat. Because BSA's "Youth

Protection Program," which aimed at educating parents and scouts of the pedophilia threat, postdates the events giving rise to plaintiffs' claims here, plaintiffs maintain that the Files are essential to defining the severity of the known pedophilia threat in the 1970s and early 1980s and to evaluating the degree of care that BSA exercised in meeting it. *Juarez v. Boy Scouts of Am., Inc.*, 81 Cal. App. 4th 377, 392, 97 Cal. Rptr. 2d 12 (2000) (stating that implementation of BSA's "Youth Protection Program" occurred in 1987). Plaintiffs therefore asked the court to deny BSA's motion for a protective order and instead require BSA to produce the requested documents, redacting information identifying the victims.

The trial court signed an order on September 27, 2004, denying BSA's motion and imposing the following requirements:

> BSA is ordered to forthwith produce those files (not already in plaintiffs' counsel's possession and identified in plaintiffs' response) for inspection and copying by plaintiffs' counsel, and all alleged victims' names shall be redacted from the documents copied. Alleged perpetrators' names shall also be redacted, and identifying numbers or codes may be substituted for such names. Identifying numbers or codes shall be individual to each alleged perpetrator, so that any alleged multiple offenders can be identified.
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> . . . .
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> . . . Counsel shall cooperate in drafting an appropriate protective order limiting the viewing of these documents to counsel and their designated assistants, identifying all such individuals, and prohibiting the distribution or publication of all such documents.

CP at 669-70. BSA moved for reconsideration or, pursuant to RAP 2.3(b)(4), certification of the issue for discretionary review. The trial court denied both reconsideration and certification.

BSA filed a motion for discretionary review in Division One of the Court of Appeals, contending that the trial court's order requiring disclosure of the Files constituted "probable error" under RAP 2.3(b)(2). Renewing its argument that the trial court's order violated the privacy rights of third parties, BSA cited the protection afforded in article I, section 7 of the Washington State Constitution.[3] In response, plaintiffs raised the threshold issue of BSA's standing to assert the rights of third parties and disputed the notion that the state constitutional privacy protection should preclude civil discovery of the Files. Commissioner Neel heard argument on December 3, 2004, and on December 8 entered an order granting discretionary review and setting a briefing schedule. Plaintiffs timely filed a motion to modify Commissioner Neel's ruling. While awaiting a decision on that motion, the parties completed their briefing. On February 9, 2005, a panel of the Court of Appeals granted the motion to modify and denied BSA's motion for discretionary review. BSA then filed an emergency motion to modify, but that motion was denied.

In an emergency motion filed thereafter in this court, BSA asked the court to

[3] Article I, section 7 provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law."

grant discretionary review "for the purpose of *reinstating BSA's appeal and resolving the issues raised by that appeal*." BSA's Emergency Mot. for Discretionary Review at 20 (emphasis added). Applying the RAP 2.3(b) criteria, this court's commissioner ruled that interlocutory review of the superior court's discovery order was not warranted. Nevertheless, we thereafter granted BSA's motion to modify and its motion for discretionary review, effectively reinstating and retaining BSA's appeal,[4] for which the parties' briefing had already been completed below. The Washington State Trial Lawyers Association Foundation filed an amicus brief, and BSA responded.

Issue

In responding to BSA's motion for a protective order under CR 26(c),[5] did the trial court abuse its discretion by failing to apply the *Snedigar* balancing test to BSA's

[4] BSA recently filed in this court a "Motion to Remedy Violations of Protective Orders" but subsequently withdrew that motion and filed in its stead an "Agreed Motion Concerning Compliance with Protective Orders." The requests made in the "Agreed Motion" are referred to the superior court to be considered as part of that court's further proceedings consistent with this opinion.

[5] While the trial court technically denied BSA's motion (since BSA sought relief from any further production requests concerning the Files), the court's order imposed protective measures, requiring redaction of victims' and perpetrators' names and restricting access to the Files. *See* above at 6 and below at 10; CP at 669-70.

claim that disclosure of the Files would violate the privacy rights of third parties named in the Files?

Analysis

Standard of Review. An appellate court reviews a trial court's discovery order for an abuse of discretion. *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 778, 819 P.2d 370 (1991). Judicial discretion "means a sound judgment which is not exercised arbitrarily, but with regard to what is right and equitable under the circumstances and the law, and which is directed by the reasoning conscience of the judge to a just result." *State ex rel. Clark v. Hogan*, 49 Wn.2d 457, 462, 303 P.2d 290 (1956). An appellate court will find an abuse of discretion only "on a clear showing" that the court's exercise of discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A trial court's discretionary decision "is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A court's exercise of discretion is "'manifestly unreasonable'" if "the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take.'" *Id.* (quoting *State v. Lewis*, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990)).

Applicability of the Snedigar Balancing Test to BSA's Request for a Protective Order under CR 26(c). Under CR 26(b)(1), "[p]arties may obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action." (Emphasis added.) As a further limitation on discovery, the trial court, "[u]pon motion by a party or by the person from whom discovery is sought, and *for good cause shown*, . . . may make any order *which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense*." CR 26(c) (emphasis added). In drafting a protective order under CR 26(c), the trial court may order "that the discovery not be had" at all, or it may place conditions or limitations on the requested discovery—for example, by specifying the time or place, restricting the scope of inquiry, or designating the persons who may be present. CR 26(c)(1), (2), (4), (5).

Here, the trial court's discovery order denied BSA's request for a protective order that would have provided, pursuant to CR 26(c)(1), "that the discovery [of the

Files] not be had,"[6] but the court's discovery order did require, not simply the redaction of the alleged victims' names, as plaintiffs had requested, but also the redaction of the "[a]lleged perpetrators' names." CP at 669. The order thus mandated some CR 26(c) protective measures and additionally required that, in cooperatively drafting the protective order, the parties incorporate a provision "limiting the viewing of these documents to counsel and their designated assistants, identifying all such individuals, and prohibiting the distribution or publication of all such documents." CP at 670.

Seeking reversal of the trial court's discovery order, BSA claimed in its opening brief that the trial court abused its discretion by failing to extend the balancing test called for in *Snedigar*, 114 Wn.2d 153, to plaintiffs' request for production of the Files. In BSA's view, because the *Snedigar* court had imposed a balancing test for weighing a political party's qualified First Amendment associational privilege against a plaintiff's entitlement to discovery under CR 26, the trial court here should have

[6] As to plaintiffs' contention that BSA lacked standing to assert the privacy interests of third parties, we need not determine whether BSA has persuasively shown (1) that it "has suffered an injury-in-fact," (2) that it "has a close relationship to the third party," and (3) that "some hindrance [exists] to the third party's ability to protect his or her own interests." *Mearns v. Scharbach*, 103 Wn. App. 498, 512, 12 P.3d 1048 (2000). Even if the three factors were to weigh against our recognizing BSA's third-party standing, that would "not necessarily mean . . . that such important nonparty rights should not be considered, or that the right to privacy and the right to know should not be weighed, during the discovery process." *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 944 (Fla. 2002).

applied the same balancing test when measuring BSA's assertion of the article I, section 7 privacy rights of third parties against plaintiffs' right to civil discovery of the Files. To be fair to the trial court, we recognize at the outset that both article I, section 7 and the *Snedigar* balancing test were latecomers to BSA's arguments resisting discovery. BSA's motion for a protective order alluded to the right of privacy under the federal constitution, but BSA did not mention the state constitutional provision in that motion or the motion for reconsideration; in fact, BSA first referred to article I, section 7 in a footnote in its motion for discretionary review, and BSA's assertion of the applicability of the *Snedigar* balancing test was made still later in its reply brief. In sum, the trial court was not asked to apply the legal standard that BSA has since made the cornerstone of its appeal.

To evaluate the soundness of BSA's equation of the associational privilege at issue in *Snedigar* with the article I, section 7 protections that BSA asserts here, we begin with a review of the development and application of the *Snedigar* balancing test. The test that this court adopted in *Snedigar* had its genesis in the Court of Appeals decision, *Snedigar v. Hodderson*, 53 Wn. App. 476, 768 P.2d 1 (1989). Richard Snedigar, a former member of the Freedom Socialist Party, filed suit to recover a monetary contribution made in response to the Party's solicitation of funds for a new headquarters. The trial court granted Snedigar's motion to compel discovery of the

minutes of relevant meetings, requiring that they be submitted for in camera inspection but permitting redaction of the names of Party members. Appealing to Division One of the Court of Appeals, the Party argued that the discovery order violated the Party's First Amendment rights. In the absence of Washington case law directly on point, the Court of Appeals relied on *Wilkinson v. FBI*, 111 F.R.D. 432 (C.D. Cal. 1986). In *Wilkinson*, the federal district court discussed the applicability of "a *qualified First Amendment associational privilege* in the context of discovery." *Id*. at 436 (emphasis added). Having reviewed the limited case law, the *Wilkinson* court observed that "the First Amendment associational privilege has been applied only in situations where the discovery request specifically required disclosure of the names of a group's members or financial contributors"—"information at the core of the group's associational activities." *Id*. at 437, 436. As the court explained, once a litigant established "that the discovery request [was] directed at the heart of a group's protected associational activities, the court is required to subject the request to a higher level of scrutiny." *Id*. at 436. Because the associational privilege is not absolute, a court faced with a discovery dispute must rely on a balancing test, "essentially requiring both a heightened degree of relevance to the subject matter of the suit and a showing by the party seeking discovery that it has made reasonable, unsuccessful attempts to obtain the information elsewhere." *Id*.

The Court of Appeals considered alongside *Wilkinson* two decisions from this court that had "used an analysis similar to that described in *Wilkinson* to determine whether a reporter's *qualified common law privilege* against compulsory disclosure of news sources should provide protection from discovery requests." *Snedigar*, 53 Wn. App. at 482 (emphasis added). In *Senear v. Daily Journal-American*, 97 Wn.2d 148, 641 P.2d 1180 (1982), this court determined that reporters had a qualified common law privilege in civil litigation, but that the privilege could be defeated if the party seeking disclosure could show that the claim was meritorious, that the information being sought went "'to the heart of the plaintiff's claim,'" and that "a reasonable effort [had been] made to acquire the desired information by other means"; additionally, the court must find that the reporter "need[ed] to preserve confidentiality." *Id*. at 155-56 (quoting *Garland v. Torre*, 259 F.2d 545, 550 (2d Cir.), *cert. denied*, 358 U.S. 910 (1958)). In *State v. Rinaldo*, 102 Wn.2d 749, 754-55, 689 P.2d 392 (1984), this court extended the qualified privilege for news reporters to criminal cases and endorsed as well the *Senear* court's criteria for defeating the privilege. *Id*. at 755-58.

Relying on the federal courts' application of a qualified First Amendment associational privilege to discovery requests, as well as on this court's analogous application of a qualified privilege for news reporters resisting discovery, the Court of Appeals adopted the following three-step test to determine whether the Party's

assertion of a First Amendment associational privilege would protect its minutes from Snedigar's civil discovery request:

> First, the party asserting the privilege must make an initial showing that disclosure of the materials requested would in fact impinge on First Amendment rights. . . .
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> Once this preliminary showing of privilege is made, the burden then shifts to the party seeking discovery to establish the relevancy and materiality of the information sought, and to make a showing that reasonable efforts to obtain the information by other means have been unsuccessful. . . .
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> If this burden is met, it is for the trial court to balance the parties' competing claims of privilege and need. At this stage, the trial court may order an in camera inspection of the requested information to better ascertain the strength of the parties' competing claims, and decide whether, and to what extent, discovery of the requested materials is appropriate.

Snedigar, 53 Wn. App. at 483. This court subsequently embraced this three-part balancing test but with one change; although the Court of Appeals had required a threshold showing of "*actual* infringement," this court held that "[t]he party asserting the First Amendment associational privilege is only required to show *some probability* that the requested disclosure will harm its First Amendment rights." *Snedigar*, 114 Wn.2d at 158.

That the *Snedigar* balancing test applies to a *privilege* asserted by a party resisting a discovery request—and was, in fact, derived from cases defining privileges against compliance with discovery requests—is of considerable significance in

determining whether a trial court must use the *Snedigar* balancing test when a party resists disclosure by asserting, not a particular statutory, common law, or constitutional *privilege*, but a general right to privacy under article I, section 7. When a trial court considers a discovery request under CR 26(b)(1), the court considers the relevance of the requested discovery only after making the threshold determination of whether a privilege shields the matter from disclosure: "Parties may obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action." (Emphasis added.) Washington commentators have explained that "[p]rivilege, within the meaning of the Rule, is privilege as it exists in the law of evidence." 4 Lewis H. Orland & Karl B. Tegland, Washington Practice: Rules Practice CR 26, at 28 (4th ed. 1992). For example, among the privileges included in the nonexclusive list in ER 501 are the statutory attorney-client, doctor-patient, priest-penitent, and psychologist-client privileges, as well as the statutory spousal privilege and the common law news reporter's privilege. As this court observed in *State v. Maxon*, 110 Wn.2d 564, 756 P.2d 1297 (1988), "*[p]rivileges* are recognized when *certain classes of relationships*, or *certain classes of communications within those relationships*, are deemed to be so important to society that they must be protected, even at the expense of the fact-finding process in criminal investigations and prosecutions." *Id*. at 567 (emphasis added).

As with the evidentiary privileges identified in ER 501, the qualified First Amendment associational privilege at issue in *Snedigar* protects a particular type of relationship—the relationship between a political party and its membership—and the communications "at the core of" that relationship. *Wilkinson*, 111 F.R.D. at 436. The qualified associational privilege afforded a political party and its membership thus bears a strong resemblance to the evidentiary privileges circumscribing discovery under CR 26(b)(1). In contrast, the BSA-informant privilege does not exist in the law of evidence, nor are the communications hypothetically protected by a BSA-informant privilege in any way comparable to those "deemed to be so important to society that they must be protected, even at the expense of the fact-finding process in criminal investigations and prosecutions." *Maxon*, 110 Wn.2d at 567. Indeed, the opposite is true: a society interested in protecting children from criminal assaults would not reasonably leave to the discretion of a children's social club the disclosure of information regarding criminal assaults on children. In sum, BSA's assertion of the privacy interests of third parties cannot be construed as the assertion of a "privilege" within the meaning of CR 26(b)(1).

While the *Snedigar* court restricted its focus to the protectiveness of a particular qualified privilege (and did not place that inquiry in the broader context of CR 26),[7]

[7] Indeed, the *Snedigar* opinion neither quotes CR 26 nor refers to CR 26(c), but simply cites CR 26(b)(1) for the preliminary observation that "CR 26 . . . provides that parties may not obtain discovery of privileged information." 114 Wn.2d at 158-59.

we demonstrated in *Doe*, 117 Wn.2d 772, a case decided almost two years after *Snedigar*, that the applicability of recognized privileges is a threshold matter for the trial court under CR 26(b)(1) and that the court thereafter weighs a resisting party's

asserted privacy interests pursuant to CR 26(c). That we did not view the assertion of privacy claims as an assertion of a privilege is made clear in our *Doe* opinion. There, in part II, "Privilege," we addressed the Blood Center's asserted privileges in two subsections, "Physician-Patient Privilege" and "Common Law [Donor-Blood Bank] Privilege." *Id*. at 779-80. We included the privacy claims in part III, which we entitled "The Interests Involved" and which included subsections that identified the components of "the trial court's exercise of discretion under CR 26(c)": "Plaintiff's Interests," "Right of Privacy [Claimed by the Blood Center]," and "Public Policy." *Id*. at 780-89. The *Doe* opinion thus showed that, if a trial court finds under CR 26(b)(1) no applicable privileges (and also concludes that the information sought is "relevant"—that is, "reasonably calculated to lead to the discovery of admissible evidence"), the court may then entertain a motion for a protective order under CR 26(c) and "for good cause shown . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, [or] oppression."

The *Doe* court's inclusion of the Blood Center's constitutional privacy claims within the section of the opinion addressing the trial court's exercise of discretion under CR 26(c) can leave no doubt that the trial court, when considering a CR 26(c) motion, weighs the asserted privacy interests against the needs of the litigant seeking disclosure. Consistent with the approach endorsed in *Doe*, this court had previously

recognized the presumption in CR 26(c) that discovery opens "[a] realm of privacy which courts had previously left undisturbed," and we had explicitly stated that the trial court's weighing of those privacy interests is inherent in CR 26(c):

> In determining whether a protective order is needed and appropriate, the court properly weighs the respective interests of the parties. The judge's major concern should be the facilitation of the discovery process and the protection of the integrity of that process, *which necessarily involves consideration of the privacy interest of the parties* and, in the ordinary case at least, does not require or condone publicity.

Rhinehart v. Seattle Times Co., 98 Wn.2d 226, 236, 256, 654 P.2d 673 (1982) (emphasis added). Reiterating this point, the United States Supreme Court had likewise recognized prior to *Doe* that, "[a]lthough [CR 26(c)] contains no specific reference to privacy or to other rights or interests that may be implicated, such matters are implicit in the broad purpose and language of the Rule." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 n.21, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984); *see also Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 629, 818 P.2d 1056 (1991) (observing that, "[u]nder CR 26(c), a judge is given broad discretion in fashioning discovery orders in order to protect a person's privacy").

Conclusion

We hold that, in weighing BSA's assertion that the compelled discovery of the Files under CR 26 would violate the constitutional privacy rights of third parties named in the Files, the trial court was not required to apply the balancing test set forth

in *Snedigar* for assessing a party's qualified First Amendment associational privilege. The article I, section 7 "private affairs" protection asserted by BSA is not a "privilege" within the meaning of *Snedigar* or CR 26(b)(1) but rather is a privacy interest that the trial court necessarily evaluates when considering a motion for a protective order under CR 26(c). Because BSA has not shown that the trial court's decision to deny BSA's motion for a protective order "was reached by applying the wrong legal standard," we find no abuse of discretion. *Rohrich*, 149 Wn.2d at 654. The trial court's discovery order is affirmed.

AUTHOR:

Justice Susan Owens

WE CONCUR:

Chief Justice Gerry L. Alexander

Justice Tom Chambers

Justice Charles W. Johnson

Justice Barbara A. Madsen

Justice Mary E. Fairhurst

Justice Bobbe J. Bridge